IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

MACA.No. 1074 of 2006()

OPMV.1843/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM DT.26.5.04.
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APPELLANT/1ST RESPONDENT:

ABDUL AZEEZ, NOUSHAD MANZIL,
T.C.41/2379, MANACAUD, THIRUVANANTHAPURAM-9,
NOW RESIDING AT T.C.4/2445, N.S. MANZIL,
UDAYA COMPOUND, MANACAUD, TRIVANDRUM.

BY ADV. SRI.P.A.AHAMMED
SRI.A.AHZAR
SRI.THOUFEEK AHAMED

RESPONDENTS: ADDL.P2 TO P6 & RESPONDENTS 2 & 3
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1. SULFATH BEEVI, BUSHARA MANZIL,
ALUMMOODU, KANIYAPURAM P.O., TRIVANDRUM.

2. BUSHARA BEEVI, BUSHARA MANZIL,
ALUMMOODU, KANIYAPURAM P.O., TRIVANDRUM.

3. MUHAMMED NAZEER, BUSHARA MANZIL,
ALUMMOODU, KANIYAPURAM P.O., TRIVANDRUM.

4. M/S.SUBRA @ NISHI (MINOR)
BUSHARA MANZIL, ALUMMOODU,
KANIYAPURAM P.O., TRIVANDRUM.

5. ASHIYA BEEVI, KANICKAKATHIL VEEDU,
MADENTHE PACHA, KURUVILAKKONAM,
KUDAVOOR, NAVIKKULAM, PUTHUSSERIMUKKU.

**6. M. HUSSAIN, PUTHUVAL PUTHEN VEEDU,
MANGALAPURAM P.O., TRIVANDRUM.**

**7. M/S. NEW INDIA ASSURANCE COMPANY LTD.,
DIVISIONAL OFFICE, KOTTARATHIL BUILDING
ANNEXE, PALAYAM, TRIVANDRUM-33.**

**BY ADV. SRI.NAGARAJ NARAYANAN - R1 TO R4
SRI.SAIJO HASSAN
SRI.A.S.SABU
SRI.P.G.GANAPPAN - R7**

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.A.C.A. No. 1074 of 2006

Dated this the 5th day of July, 2007

Judgment

Koshy, J.

One Muhammed Ibrahim was riding a motor cycle bearing registration No.KL-01H/2264 along the Thiruvananthapuram-Kollam National highway. He was knocked down by a lorry bearing registration No.KL-01A/6224. He filed an application for compensation claiming that the accident occurred due to the negligence of the driver of the lorry (second respondent) which was owned by the appellant (first respondent in the claim petition) and insured by the third respondent. As a result of the accident, Muhammed Ibrahim sustained very serious injuries including head injuries. He was treated in the Medical College Hospital. C.T. scan revealed a fracture of the floor of the anterior cranial fossa bilaterally. He also had left maxillary sinus haematoma. C.T. scan also revealed the fracture of the distal end of the clavical which was treated with jones strapping. He was sent for psychiatry consultation on1 2.6.1999 and it was found that he was in a delirious state secondary to

brain lesim. Regular neurosurgery consultation was done. Ext.A14 is the discharge summary issued from the Department of Neurosurgery which shows that the applicant was admitted in the Medical College Hospital on 31.7.1999 and discharged on 8.10.1999 for post traumatic behavioural disorder. The doctor has noted that the first applicant developed post traumatic psychosis and was started on anti-psychotic drugs by the psychiatrist. He was admitted worsening of behavioural disorder and he was seen regularly by the psychiatrist and dose of anti-psychotic drugs were administered. It was observed in Ext.A16 certificate issued by the doctor that the patient was suffering from severe post traumatic psychosis with suicidal tendency. It appears that he has committed suicide, subsequently, after filing the case by consuming poison. After his death, his wife and children were impleaded as additional claimants.

2. Before the accident, he was an earning member. His taxable income was Rs.78,800/-. It was found that the vehicle was not insured at the time of the accident and the tribunal awarded a total compensation of Rs.7,30,000/- with 9% interest per annum. The compensation was directed to be paid jointly and

severally by the appellant, the registered owner as well as by the driver, second respondent in the O.P. (M.V.).

3. The appellant remained ex parte before the tribunal. Appeal is dated 22.3.2006. Appeal is filed when execution proceedings were taken against him. It is his case before this court that he did not receive notice from the Motor Accidents Claims Tribunal. Therefore, he was not able to prove his case. According to him, the address mentioned in the claim petition is M. Abdul Azeez, Noushad Manzil, T.C.41/2379 Manacaud, Thiruvananthapuram 9. He shifted his residence to T.C.41/2445, N.S. Manzil, Manacaud, Thiruvananthapuram. According to him, he sold the old house and residing in the new house. It is contended by the claimants that it is only re-numbering of the house number by the Corporation and he was available in the same residence. Apart from the above, it was also pointed out that if the appellant was residing in the nearby house in the same ward of the Corporation, the postman would have delivered the notice to the appellant and the contention that he did not receive the notice was not correct. As per the records, after receiving notice, he remained ex parte leaving the insurance company to take all contentions. It

is his further case that he has transferred the vehicle before the accident to the sixth respondent, M. Hussain. Sixth respondent signed the notice, but, did not make appearance before this court. Even if his contention is that transfer of title was made before the accident, as far as third parties are concerned, he can claim compensation from the registered owner. In Dr. T.V. Jose v. Chacko P.M. (AIR 2001 SC 3939), it was held that transfer of title can be made on payment of consideration and delivery of car. Merely because name of the transferor owner had not been changed in the records of RTO, it does not mean that the ownership of vehicle is not transferred. But, even if ownership of the car is transferred, appellant transferor continues to remain liable to third parties and he cannot escape liability. Therefore, as far as third parties are concerned, registered owner is liable. If the vehicle was transferred, it is the duty of the appellant to see that the transfer is entered in the registration book also. Counsel for the claimants submitted that the present submission that he has transferred the vehicle to sixth respondent is not correct and sixth respondent may be his relative or his friend and such a contention was taken

only to avoid the liability. Therefore, claimants will not be able to recover no amount from him. Sixth respondent did not make appearance before this court despite service of notice to him. Since the appellant was the registered owner at the time of the accident, he is bound to deposit the compensation payable to third parties. However, appellant's remedy is to recover the amount from the transferee after depositing the amount ordered to be paid to the third parties even by execution of the order itself. Out of the total amount awarded, if the appellant deposits Rupees three lakhs within one month from today, on the facts of this case, we are of the opinion that appellant can be given one more opportunity to make his contentions before the tribunal by setting aside the ex parte award. He can also adduce evidence to show that the vehicle was insured at the time of accident. Hence, we remand the matter and, in the interest of justice, the above right to contest the case is given only if appellants deposits Rupees Three lakhs within one month from today before the M.A.C.T. If Rupees Three lakhs is deposited within one month from today, fresh award should be passed by the tribunal in place of the impugned award. Finding of negligence on

the part of the driver of the vehicle cannot be re-opened.

Parties should appear before the Motor Accidents Claims Tribunal on 10.9.2007. The tribunal should issue fresh notice to sixth respondent. The tribunal is also directed to dispose of the matter as expeditiously as possible, in any event, before the end of this year. If the amount is deposited as directed, the tribunal shall disburse the same to the claimants as the accident was occurred in 1999 and the claimants were not given any amount so far. If Rupees Three lakhs, as directed, is not deposited within one month from today, the impugned order will stand affirmed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.A.C.A.NO.1074/2006

JUDGMENT

Dated:5th July, 2007